

No. 83-1944

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In The
Supreme Court of the United States
October Term, 1984

HOLLY JENSEN, Director and
WILLIAM J. EDWARDS, Deputy Director,
Department of Motor Vehicles, State of Nebraska

Petitioners,

vs.

FRANCES J. QUARING,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

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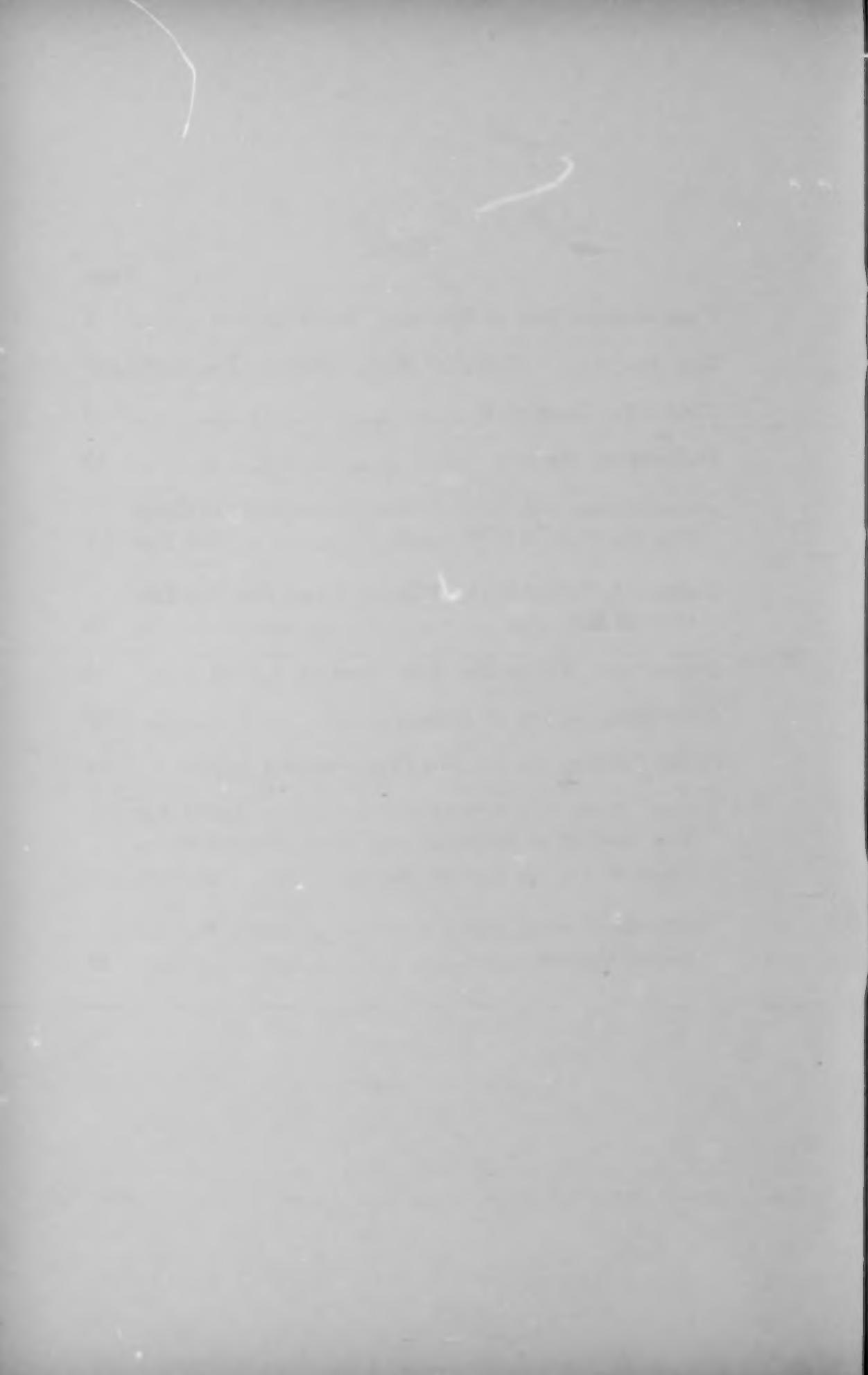
PETITION FOR CERTIORARI FILED MAY 26, 1984.
CERTIORARI GRANTED OCTOBER 1, 1984.

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The following opinions, orders and statutes have been omitted in printing this appendix because they appear on the following pages in the Appendix to the printed Petition for Certiorari:

Memorandum and Order of the District Court for the District of Nebraska, dated October 15, 1982	A 1
Judgment of the Court of Appeals for the Eighth Circuit, dated March 1, 1984	A16
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**CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES**

July 9, 1982—Plaintiff's complaint filed in the United States District Court for the District of Nebraska.

August 12, 1982—Defendant's answer filed.

October 15, 1982—Memorandum and order of the District Court entered.

December 7, 1982—Judgment of the District Court entered, permanently enjoining defendant's from refusing to issue plaintiff a valid non-photographic Nebraska driver's license and awarding plaintiff costs and attorney's fees.

January 6, 1983—Defendant's motion for stay pending appeal.

January 6, 1983—Defendant's notice of appeal.

January 18, 1983—Order of the District Court denying motion for stay pending appeal.

March 1, 1984—Opinion and judgment of the Court of Appeals for the Eighth Circuit entered.

Neb. Rev. Stat. § 60-406.04 (Supp. 1982)

APPENDIX TO PRINTED PETITION
FOR CERTIORARI, A33

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CV82-L-346

FRANCES J. QUARING,

Plaintiff,

vs.

HARRY "PETE" PETERSON*, Director and WILLIAM J. EDWARDS, Deputy Director, Department of Motor Vehicles, State of Nebraska,

Defendants.

PLAINTIFF'S COMPLAINT

Filed July 9, 1982

PARTIES

1. Plaintiff Frances J. Quaring is a citizen of the State of Nebraska, residing in Buffalo County.

2. Defendants Harry "Pete" Peterson and William Edwards are citizens of the State of Nebraska, residing in Lincoln, Lancaster County, Nebraska.

THE NATURE OF THIS ACTION

3. This is a Civil Rights Action arising under 42 U.S.C. § 1983. Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. § 2201, declaring that Defendants have violated Plaintiff's civil rights in their application of NEB. REV. STAT. § 60-406.04 (Supp. 1981) to Plaintiff to deny her a Nebraska Motor Vehicle Operator's License, said denial being an infringement upon Plaintiff's

*(Holly Jensen substituted as petitioner pursuant to Rule 40.3)

right to freely exercise her religious beliefs, in violation of the First Amendment to the Constitution of the United States and 42 U.S.C. § 1983.

4. Plaintiff also seeks injunctive relief enjoining Defendants from enforcing NEB. REV. STAT. § 60-406.04 (Supp. 1981) as to Plaintiff insofar as that statute requires a Nebraska Motor Vehicle Operator's License to bear a color photograph of the licensee.

JURISDICTION

5. This action arises under 42 U.S.C. § 1983 and jurisdiction is conferred on this Court by 28 U.S.C. § 1333(3).

FACTS

6. Defendant Harry "Pete" Peterson is the director of the State of Nebraska Department of Motor Vehicles and pursuant to *Neb. Rev. Stat.* §§ 60-1501 et seq. (Reissue 1978) is charged with the administration and enforcement of the laws of the State of Nebraska relating to motor vehicles. In addition, Defendant Harry "Pete" Peterson is charged with the administration and enforcement of those laws of the State of Nebraska specifically related to motor vehicle operator's licenses which are found at *Neb. Rev. Stat.* §§ 60-401 et seq. (Reissue 1978, Cum. Supp. 1980, Supp. 1981).

7. Defendant William Edwards is the deputy director of the State of Nebraska Department of Motor Vehicles and among the duties delegated to him by the Director is responsibility for motor vehicle operators' licensing matters.

8. In doing the acts and things hereinafter set forth, both Defendants were acting in their respective capacities as stated above, under color of the Nebraska statutes cited above, and, in particular, under color of and pursuant to *Neb. Rev. Stat. § 60-406.04* (Supp. 1981) which reads in pertinent part as follows:

60-406.04. Operators' licenses; color photograph affixed; procedure; costs; temporary motor vehicle operator's permit; when issued; fees; period valid. (1) All motor vehicle operator's licenses except limited, special, learners', temporary as provided by subsection (2) of this section and subsection (4) of section 60-415, or school permits issued in the state after January 1, 1978, shall have a color photograph of the licensee affixed thereto.

9. Plaintiff Frances J. Quaring is an adult white female who on April 13, 1982, qualified to be issued a Nebraska Motor Vehicle Operator's License by passing both the law test and the driving test administered by the licensing examiner in Kearney, Buffalo County, Nebraska, said examiner being duly authorized to conduct licensing examinations by the Department of Motor Vehicles, and its Director. A copy of Plaintiff's approved application for a motor vehicle operator's license is attached hereto as Exhibit A, and made a part hereof by this reference.

10. Despite the fact that Plaintiff has qualified to be issued a motor vehicle operator's license, Plaintiff has been prevented from obtaining such a license because she refuses to allow her photograph to be taken as required by *Neb. Rev. Stat. § 60-406.04* (Supp. 1981).

11. The basis of Plaintiff's refusal to allow herself to be photographed is her sincerely-held religious belief in a

literal interpretation of the Second Commandment which is found in the Bible at Exodus 20:4 and reads as follows:

Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth.

12. Plaintiff has informally and orally requested of the Defendants that they make an exception to the license photograph requirement in order to accommodate Plaintiff's sincerely-held religious beliefs and Defendants, acting under color of and pursuant to *Neb. Rev. Stat.* § 60-406.04 (Supp. 1981) have refused to make such a religious exception or exemption.

13. Plaintiff has formally made a written request of the Defendants that they make an exception to the license photograph requirement in order to accommodate Plaintiff's sincerely-held religious beliefs and Defendant Harry "Pete" Peterson, Director of the State of Nebraska Department of Motor Vehicles, acting under color of and pursuant to *Neb. Rev. Stat.* § 60-406.04 (Supp. 1981) has issued a formal Order denying Plaintiff's application for a Nebraska Motor Vehicle Operator's License without a color photograph attached to it. A copy of Defendant Peterson's Order is attached hereto as Exhibit B, and made a part hereof by this reference.

14. Plaintiff has been subjected, because of the Defendants' refusal to issue her a motor vehicle operator's license without a color photograph attached, said refusal being under color of the above-cited Nebraska statute, to the deprivation by Defendants of her right to freely exercise her religion as guaranteed to her under the First Amendment to the United States Constitution.

15. As the direct consequence and result of the acts of the Defendants hereinabove complained of, Plaintiff has been deprived of her right to exercise her religion free from interference imposed under color of law; Plaintiff has been denied a Nebraska Motor Vehicle Operator's License even though she was qualified to receive such license; Plaintiff has been denied the privilege freely granted to others who do not hold Plaintiff's religious beliefs to legally drive motor vehicles to her place of employment and for purposes connected with the operation of the family farm she and her husband operate in Buffalo County, Nebraska; and Plaintiff has been denied the privilege freely granted to others who do not hold her religious beliefs to legally drive motor vehicles to religious meetings and interdenominational church functions.

14. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays for an Order of this Court declaring that Defendants have violated Plaintiff's First Amendment right to freely exercise her religion by their application of *Neb. Rev. Stat. § 60-406.04* (Supp. 1981) to Plaintiff; for injunctive relief requiring Defendants to issue a motor vehicle operator's license without a color photograph to Plaintiff; for reasonable attorney fees and the costs of this action; and for such other and further relief as the Court may deem just and equitable.

Plaintiff further requests trial in Lincoln, Nebraska.

(Signature, verification, and jurat
omitted in printing)

EXHIBIT A

BEST AVAILABLE COPY

NEBRASKA APPLICATION

MUST BE PRESENTED TO THE COUNTY TREASURER

X-OPR

PRINT

Frances

(First)

(Middle Initial)

Street, Route Rt 2 Box 122 City Sheilon

or Box No.

Date of Birth	Age	Color Eyes	Color Hair	Height	Weight	Sex	Race	How long have you driven?
Month Day Year								

4 - 1 - 46 36 Brn Brn 5'-6"

125 F W 20 yrs

Have you or do you now suffer any physical defects that would detract from normal ability to safely operate a motor vehicle?

No

Have you suffered the loss of a hand? Yes NoDo you need corrective lenses for driving? Yes NoDo you or have you suffered from epilepsy, paralysis, fainting spells, convulsive seizures? No

Circle which. Give date of last attack

Do you possess sufficient eyesight and hearing to enable you to operate a motor vehicle on the streets, alleys or public highways of this state with a reasonable degree of safety? YesHas your operator's license or privilege to operate ever been suspended or revoked? If so, give date, place and period of suspension or revocation. NoDo you hold a driver's license from another state? Yes No

If yes, what state?

The undersigned being duly sworn deposes and affirms to say that the answers to the foregoing questions are true.

X-OPR

Your Name Frances

(First)

(Middle Initial)

Signature of Parent or Guardian

Subscribed and sworn or affirmed to before me that _____ day of _____

at _____, Nebraska

Have you held a Nebraska license before? _____

X-OPR

Name _____

Expiration Date _____

License No. A9-34913

State _____

IP-59

DC State _____

Minot N

Ymt N

Badge No. 42

Signature _____

EXAMINER'S CERTIFICATE

TO THE COUNTY TREASURER: _____

This is to certify that the above applicant may be issued a NEBRASKA OPERATOR'S LICENSE OR PERMIT, subject to the limitations stated in the application, upon payment of a fee.

Remarks _____

License Examiner _____

Issued License No. & Permit No. _____

Date of issuance _____

Badge No. 42

EXHIBIT B

(Attached to Plaintiff's Complaint)

**BEFORE THE DIRECTOR OF THE DEPARTMENT
OF MOTOR VEHICLES OF THE
STATE OF NEBRASKA****In the Matter of the Application for a Nebraska Motor
Vehicle Operator's License by FRANCES J. QUARING****ORDER**

This matter came on for decision upon the application of Frances J. Quaring for a Nebraska motor vehicle operator's license. Said Order is based upon the files and records of the Department concerning the application and qualifications of said Applicant, and based upon the Affidavit executed by said Applicant and submitted to the Department.

The following findings and fact and conclusions of law are made:

1. That the Applicant has met the necessary requirements to obtain a Nebraska Motor Vehicle Operator's License by passing both the law test and the driving test administered by the licensing examiner in Kearney, Buffalo County, Nebraska.
2. That Neb. Rev. Stat. § 60-406.04 (1981 Supp.), provides in part:

- (1) All motor vehicle operators' licenses except limited, special, learners', temporary as provided by subsection (2) of this section and subsection (4) of section 60-415, or school permits issued in the state after January 1, 1978, shall have a color photograph of the licensee affixed thereto.

3. That Applicant, Frances J. Quaring, has refused to permit herself to be photographed in accordance with the aforesaid statute.

4. That the Director of the Department of Motor Vehicles is without the statutory authority to either amend or interpret Neb. Rev. Stat. § 60-406.04 (1981 Supp.), to provide an exception to the mandatory requirement of a color photograph being affixed to each operator's license issued by the Department.

5. That the Applicant alleges that her refusal to allow herself to be photographed is based upon her religious beliefs.

IT IS THEREFORE ORDERED that the application of Frances J. Quaring for a Nebraska Motor Vehicle Operator's license is hereby denied for the reason that the Director of the Department of Motor Vehicles of the State of Nebraska is without the statutory or constitutional authority to grant an exemption from the mandatory requirement contained in Neb. Rev. Stat. § 60-406.04 (1981 Supp.).

Dated and filed this 3rd day of June, 1982.

BY THE DIRECTOR:

/s/ Harry "Pete" Peterson, Director
Department of Motor Vehicles
State of Nebraska

(Certificate of service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA
DEFENDANTS' ANSWER

Filed August 12, 1982

(Title omitted in printing)

COME NOW the defendants, by and through their attorneys, Paul L. Douglas, Attorney General, and Ruth

Anne E. Galter, Assistant Attorney General, and for answer to the complaint of the plaintiff admit, deny, and allege as follows:

1. The defendants admit the allegations contained in paragraphs 1, 2, 6, 7, 8, 9, 10 and 13 of plaintiff's complaint.
2. Defendants deny the allegations contained in paragraphs 3, 4, 5, 11, 12, 14, 15, and second paragraph 14, and each and every other allegation contained in said complaint not specifically admitted herein.
3. Defendants allege that the Director of the Department of Motor Vehicles is without the statutory or constitutional authority to grant an exemption from the mandatory requirement contained in Neb. Rev. Stat. § 60-406.04 (1981 Supp.).

WHEREFORE, defendants pray this court for an Order dismissing the complaint of the plaintiff herein, affirming the Order of the Director dated June 3, 1982, denying the application for a Nebraska motor vehicle operator's license by the plaintiff herein; taxing the costs of the instant action to the plaintiff herein; and for such other and further relief as the Court may deem just and equitable.

(signature and certificate of service
omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FRANCES J. QUARING

vs.

HARRY "PETE" PETERSON, *et al.*

MEMORANDUM AND ORDER

Filed October 15, 1982

APPENDIX TO PRINTED PETITION
FOR CERTIORARI, A1.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FRANCES J. QUARING

vs.

HARRY "PETE" PETERSON, *et al.*

JUDGMENT

Filed December 7, 1982

Pursuant to the memorandum and order of October 15, 1982, filing 14, and the memorandum of today on application for attorney's fees and costs,

IT IS ORDERED:

1. That the defendants and their agents, employees and attorneys and those persons in active concert or participation with them who receive actual notice of this judgment are permanently enjoined from refusing to issue the plaintiff a valid Nebraska driver's license because of her refusal on religious grounds to have a photograph taken of her and placed on her license; and
2. That the plaintiff is awarded \$3,434.00 as attorney's fees and \$96.07 as court costs and expenses, to be taxed as costs against the defendants.

Dated December 7, 1982.

BY THE COURT

/s/ Warren K. Urbom
Chief Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**DEFENDANTS' MOTION FOR STAY
PENDING APPEAL**

Filed January 6, 1983

(Title omitted in printing)

Pursuant to Federal Rule of Civil Procedure 62, the defendants move this court to stay the enforcement of the judgment in this action pending the disposition of the defendants' appeal to the United States Court of Appeals for the Eighth Circuit, and for that purpose to fix the amount of the bond, if any, required to be filed by the defendants.

**(Signature and certificate of service
omitted in printing)**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

DEFENDANTS' NOTICE OF APPEAL

Filed January 6, 1983

(Title omitted in printing)

Notice is hereby given that Harry "Pete" Peterson, et al., defendants above named, hereby appeal to the United States Court of Appeals for the Eighth Circuit from the final judgment and award of attorney fees entered herein on December 7, 1982, and the Memorandum and Order in support thereof entered October 15, 1982.

**(Signature and certificate of service
omitted in printing)**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FRANCES J. QUARING

vs.

HARRY "PETE" PETERSON, *et al.*
ORDER DENYING MOTION FOR STAY
PENDING APPEAL

Filed January 18, 1983

On consideration of the defendants' motion and the
briefs of the parties,

IT IS ORDERED that the motion for stay pending
appeal, filing 19, is denied.

Dated January 18, 1983.

BY THE COURT

/s/ Warren K. Urbom
Chief Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 83-1105

FRANCES J. QUARING,

Appellee,

vs.

HARRY "PETE" PETERSON*, Director and
WILLIAM J. EDWARDS, Deputy Director,
Department of Motor Vehicles,
State of Nebraska,

Appellants.

*(Holly Jensen substituted as petitioner pursuant to
Rule 40.3)

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF NEBRASKA
(Opinion)

APPENDIX TO PRINTED PETITION
FOR CERTIORARI, A16.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FRANCIS J. QUARING

vs.

HARRY "PETE" PETERSON, *et al.*,

JUDGMENT

Filed March 1, 1984

This appeal from the United States District Court was submitted on the record of the said District Court and briefs of the parties and was argued by counsel.

After consideration, it is ordered and adjudged that the judgment of the said District Court in this cause be, and the same is hereby, affirmed in accordance with the opinion of this Court.

March 1, 1984

(Attestation omitted in printing)